IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF NEW MEXICO

CHERYL BRENNER, et al.,

Plaintiffs,

vs. Civ. No. 00-1091 PJK/WWD ACE

RAN KEN, INC., et al.,

Defendants.

MEMORANDUM OPINION AND ORDER

This matter comes before the Court upon Plaintiffs' Motion for Protective Order to Prevent Discovery of Non-Work-Related Sexual History [docket no. 58]. Plaintiffs are women who were employed as waitresses at Chelsea's London Pub in Farmington, New Mexico; and their complaint alleges that they were subjected to sexual harassment in their employment. When Plaintiff Huber was questioned at her deposition, she was asked about her sexual activity outside work. Plaintiffs seek protection from this type of questioning arguing that the information being sought is not relevant, and that Federal Rule of Evidence 412 bars the sought discovery. Defendants contend that if Plaintiffs, at work or away from work, conducted themselves in ways that would impact on the question of whether Defendants' conduct at work was "unwelcome", then the Defendants are entitle to discovery with regard to that conduct.

DISCUSSION.

In considering this motion I have reviewed the submissions of counsel, the pertinent authorities cited by counsel, the Complaint, and the respective Answers. The opinions by the

Honorable John M. Facciola[1], a magistrate judge in the District of Columbia and the Honorable Leslie C. Smith[2], a magistrate judge in the District of New Mexico were helpful. I find the reasoning in Judge Facciola's opinion persuasive in the circumstances of this particular lawsuit. Accordingly, Defendants shall not be allowed to question Plaintiffs in discovery concerning Plaintiffs' sexual activities outside the workplace.

Discovery shall proceed in accordance with the foregoing.

IT IS SO ORDERED.

UNITED STATES MAGISTRATE JUDGE

[1] Howard v. Historic Tours of America, 177 F.R.D. 48 (D.D.C. 1997).

[2] Sanchez v. Zabihi, 166 F.R.D. 500 (D.C.N.M. 1996).